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made no improvements and did nothing in respect to it except expend some money and labor upon it in the ordinary course of husbandry. The aunt remained with him less than two years and then becoming dissatisfied left him, and afterwards conveyed the land to another.

Held: If any damage has been shown, it may be compensated in an action at law, and the contract will not be specifically enforced in equity.

ZIRCLE V. SOUTHERN RAILWAY CO.—Decided at Richmond, November 19, 1903.—Absent, *Buchanan, J.*:

1. RAILROADS—*Branch roads—Consent of stockholders.* Under the provisions of Acts of Assembly, 1897-8, p. 172, the consent of the stockholders of a railroad company is not necessary to authorize the president and directors of the company to construct a branch road of less than five miles in length.

2. PUBLIC USE. Where a use is public a trust attaches to the subject condemned for the benefit of the public, of the enjoyment of which it cannot be deprived by the company without a reasonable excuse, and the state retains the power to regulate and control the franchises of the company and to fix rates.

3. RAILROADS—*Eminent domain—Supervision by courts.* The legislature of this state has expressly delegated to railway companies the power of eminent domain. In the exercise of that power they represent the sovereignty of the state, and decide, within certain limitations, what and how much land of the citizen they will condemn for their purposes. Within those limitations, their discretion is practically absolute. Courts may supervise the exercise of that power, but will not undertake to control their discretion in taking property for their use unless there has been a very clear case of abuse of the power.

4. RAILROADS—*Eminent domain—Branch road to industrial enterprise—Private use.* A railway built for the purpose of reaching an industrial enterprise is for a public use, and the company is entitled to exercise the power of eminent domain in acquiring property necessary for its construction, provided the general public has the right to use it. This is true though the industrial company advance the money temporarily for the construction of the road. This is not a taking for a private use.

5. EMINENT DOMAIN—*Legislative function.* The question of the necessity, propriety, or expediency of resorting to the exercise of the power of eminent domain, in the absence of constitutional provision to the contrary, is a legislative and not a judicial function.

RAU V. SHAVER & OTHERS.—Decided at Richmond, November 19, 1903.—*Keith, P.* Absent, *Buchanan, J.*:

1. JUDGMENTS—*Lien—Interest of judgment debtor—Rights of third persons—Lien for purchase money.* If a third person furnishes the money to pay for land which is conveyed to a married woman under a written contract with her husband as her agent by which it is agreed that such third

person shall have a lien on the land until the purchase money is refunded. and the land is conveyed to the wife, the judgment creditors of the husband cannot subject said land to their judgments until said purchase money has been refunded.

2. EQUITY PRACTICE—*Suit to set aside conveyance as voluntary—Purchase money advanced by third person—Right to file petition—When to be filed.* In a suit to set aside a deed to a wife on the ground that the consideration therefor moved from her husband and that the deed is in fraud of the rights of his judgment creditors, it is error to refuse to allow a third person, who was not a party to the suit, to file a petition in the cause showing that the consideration was wholly furnished by him and asking to be admitted as a party and allowed to assert his rights therein. He should not be put to an independent suit when all of his rights can be fully determined in the pending suit. Such petition may be filed at any time before a final decree.

ADAMS V. CITY OF ROANOKE.—Decided at Richmond, November 19, 1903.—*Cardwell, J.* Absent. *Buchanan, J.*:

1. LOCAL ASSESSMENTS—*Benefits—Frontage—Proportionate value of lots.* The right to make special assessments to meet the expense of local public improvements rests upon the principle that the property assessed is peculiarly benefited by the improvement; and it does not necessarily appear that this principle is violated because one-half of the cost of the improvement is apportioned among the property owners benefited according to their frontage, or merely because a piece of property assessed for taxation at one value is required to pay a slightly larger sum than another piece of property assessed for taxes at a higher value.

2. LOCAL ASSESSMENTS—*Notice and opportunity to be heard—"Due process."* A statute which authorizes a special assessment to meet the expense of a local public improvement must provide for giving the owner of the land assessed a reasonable notice and an opportunity to appear and contest the legality, justice and correctness of the assessment before it is finally determined upon, otherwise it deprives such owner of his property without "due process of law," and is void. It is not necessary, however, that such owner should be informed of every step in the proceeding. It is sufficient if he has been given a hearing at which he may insist that his property is not benefited to the amount assessed, or that it is not benefited at all.

3. LOCAL ASSESSMENTS—*In accordance with benefits—No benefits.* An ordinance or resolution of a city council directing a special assessment for local improvements in accordance with or not in excess of the benefits derived from the improvement opens up the whole question of benefits derived by a particular piece of property even to the extent of denying any benefits whatever.

4. LOCAL ASSESSMENTS—*Acts 1899-1900, p. 1147—Constitutional law—Case at bar* The act of Assembly of March 7, 1900 (Acts 1899-1900, p. 1147), entitled "An Act to provide for local assessments in cities and towns,"